



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 31-2

Contracts Between the State and a Business  
with which a Public Official is Associated

About a decade ago a corporation leased a building and the associated land and parking lot from the State Department of Transportation. The State had obtained the premises by condemnation. They were within the right-of-way of some proposed highway construction. The corporation rented the premises primarily for the parking area. The building was subleased to other tenants. The agreement between the State and the corporation provided that the initial term of the lease was for one year. Thereafter, occupancy could be continued on a monthly basis and the agreement could be cancelled on thirty days written notice by either party.

The president and principal stockholder of the corporation signed the lease on behalf of the corporation. A year or so later he was elected to the General Assembly and is still a member of that body. Now the Department of Transportation is in the process of renegotiating the terms of the lease. The legislator, currently a director and still principal stockholder of the corporation, has asked the advice of the Ethics Commission concerning the application to the situation of subsection 1-84(i), General Statutes, the provision regarding a public official entering into a contract with the State valued at \$100 or more.

The legislator is a public official. Subsection 1-79(j), General Statutes. The Corporation is a "business with which he is associated". Subsection 1-79(a), *id.* With some exceptions not pertinent, neither the legislator nor a business with which he is associated may "enter into any contract with the state, valued at \$100 or more, ... unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded". Subsection 1-84(i), General Statutes. A lease is a contract. *Robinson v. Weitz*, 171 Conn. 545 (1976). The lease in question has a value of more than \$100. While the process of renegotiating it is a public one, it is not open for the Department of Transportation is dealing only with the current tenant. The issue becomes whether the renegotiation of the contract amounts to entering into a contract with the State.

As a matter of contract law, whether negotiations between parties to a contract lead to a modification of the contract or to a rescission of the contract and substitution of a new one depends upon the intention of the parties manifested by their

Phone: (203) 566-4472

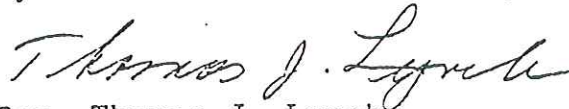
30 Trinity Street • Hartford, Connecticut 06115

*An Equal Opportunity Employer*

words and acts. Hess v. Dumouchel Paper Co., 154 Conn. 343 (1966). The legislator, who is acting for the corporation in the renegotiations, indicated in his letter requesting advice that the present lease is to be modified. The Department of Transportation has the same understanding. It is in the process of modifying all its leases to make them uniform by including certain standard terms and conditions in all of them and by changing the rental value if a re-evaluation indicates that is warranted. The changes to the terms of the original lease are not so extensive as to compel the conclusion that the renegotiation amounts to a new lease abrogating the old. The general purpose and affect of the original contract remain undisturbed. See 7 Corbin on Contracts, sections 1293, 1296 (1962).

A routine modification of a contract, making changes which are not seriously inconsistent with the original contract, does not appear to be "entering into a contract" as that term is used in subsection 1-84(i), General Statutes. Therefore, the business with which the legislator is associated may modify its lease with the State even though the Department of Transportation is not using an open process for doing so. It would be otherwise if the parties intended to enter into a new contract, or the terms agreed to were so inconsistent with the former ones that the old contract was impliedly revoked. The situation would have to be reviewed with particular care if terms of a contract were changed to favor a business after a person who is a significant figure in the business became a public official.

By order of the Commission,



Rev. Thomas J. Lynch  
Chairman

Dated March 6, 1981

Memorandum to File

Subject: Fees and Honoraria Received by Public Officials  
(§ 1-83(b)(2), C.G.S.)

AO 81-3 is still valid under the Code of Ethics for Public Officials.

However, acceptance of the honorarium in this case now probably would violate § 9-348n, C.G.S., as amended by § 13, P.A. 84-511.

Also, any honorarium provided to an elected public official by a political committee would violate § 9-348g(d), added by § 11, P.A. 84-511.

JDE

*See also amendment to § 1-83(b) made  
by § 5, P.A. 87-524.*

